



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3296-FN]

RIN 0938-ZB14

Medicare Program; Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contract

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the general criteria we will use to evaluate the effectiveness and efficiency of Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations (QIOs) that entered into contracts with CMS under the 11th Statement of Work (SOW) in May 2014. The activities for the BFCC-QIO SOW began August 1, 2014. (This contract allows for a transition period from the incumbent QIOs to the successor QIOs.) In addition, this notice addresses the public comments received on the July 28, 2014 notice with comment period entitled, “Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contracts.”

DATES: **Effective Dates:** August 1, 2014 to July 31, 2019.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

Section 1153(h)(2) of the Social Security Act (the Act) requires the Secretary of

the Department of Health and Human Services (the Secretary) to publish in the **Federal Register** the general criteria and standards that will be used to evaluate the effective and efficient performance of contract obligations by the Quality Improvement Organizations (QIOs) and to provide the opportunity for public comment with respect to these criteria and standards.

II. Provisions of the Notice With Comment Period

On July 28, 2014, we published a notice with comment period in the **Federal Register** (79 FR 43747 through 43749) entitled, “Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contracts,” announcing the general criteria we would use to evaluate the effectiveness and efficiency of Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations (QIOs) that entered into contracts with CMS under the 11th Statement of Work (SOW) in May 2014 (HHSM-500-2014-RFP-BFCC-QIO). That notice generally summarized the tasks of the BFCC-QIOs and the criteria to be used for annual performance evaluations during the 5-year term of the contract. BFCC-QIO performance under the 11th SOW contract began on August 1, 2014, after a transition period.

The tasks of the BFCC-QIOs under the BFCC-QIO 11th SOW contract are as follows:

- Quality of care reviews, including beneficiary complaint and general quality of care reviews.
- Beneficiary appeals of denials of hospital admissions discharge and terminations of services decisions commonly referred to as Grijalva, BIPA, and Weichardt

appeals.

- Medical necessity reviews.
- Appropriateness of setting reviews.
- Diagnosis Related Group (DRG) reviews.
- Readmission reviews.
- Reviews under Emergency Medical Treatment and Active Labor Act (EMTALA).
- Sanctions.
- Monitoring of Physician Acknowledgement Statements under section 1156(a) of the Act and our regulations at 42 CFR 412.46.

Evaluation of the Tasks Measures

The measures of BFCC-QIO performance for the 11th SOW are as follows:

- Quality of Review: Inter-Rater Reliability.
- 4-day Data Entry Compliance.
- Timeliness of Beneficiary Complaints and Other Quality of Care Reviews.
- Timeliness of Discharge/Service Termination Reviews.
- Timeliness of EMTALA and Higher Weighted Diagnosis-Related Group Reviews.
- Complainant Agreement to Complete Survey.
- Beneficiary Experience with Quality of Care Complaints.
- Beneficiary Experience with Appeal Reviews.

Evaluation Criteria

The Annual and 54th Month Evaluation Criteria for each of these measures are specifically defined in Attachment J-10, “Annual and 54th Month Evaluation Criteria Measures Table,” of the BFCC-QIO SOW; the criteria for evaluating each deliverable are identified in Schedule F of the 11th SOW. Additional detail is provided in the notice posted at: <http://www.gpo.gov/fdsys/pkg/FR-2014-07-28/pdf/2014-17625.pdf>

III. Analysis of and Responses to Public Comments on the Notice With Comment Period

Two commenters submitted several comments concerning the general criteria we would use to evaluate the effectiveness and efficiency of BFCC-QIOs that will enter into contracts with CMS under the 11th SOW. One commenter was affiliated with a private healthcare quality improvement entity and the other commenter was with a healthcare quality improvement association. A summary of the comments and our responses are as follows:

Comment: Both commenters expressed concern with potential public perception of bias arising from the evaluation criterion that considers of beneficiary experience with the quality of care complaints and appeal reviews as part of the evaluation of the BFCC-QIO’s performance of quality-of-care and other statutory and regulatory reviews and appeals. The commenters indicated that consideration of beneficiary experience with the quality of care complaints and appeal reviews as part of the evaluation of the BFCC-QIO’s performance might lead to the erroneous perception by the public that reviews or appeals may be biased either toward the beneficiary (when obtaining beneficiary feedback), or toward providers (when obtaining provider feedback). One commenter

encouraged CMS to carefully consider public perception of the evaluation criterion of beneficiary experience with the quality of care complaints and appeal reviews. The other commenter suggested removing customer feedback from the evaluation criteria.

Response: We appreciate the concern with maintaining the integrity of public perception of our oversight of the performance of numerous statutory and regulatory review functions to safeguard beneficiaries. The evaluation criteria and standards include safeguards to monitor the quality of the reviews, such as inter-rater reliability, the QIOs' timeliness in completing the reviews and ongoing monitoring of the BFCC-QIO's internal quality control program. The beneficiary satisfaction survey allows CMS to monitor the QIOs' ability to provide superior customer service while incorporating processes that engage beneficiaries and their representatives in ways that are patient and family centered. With appropriate monitoring and safeguards, we benefit from consideration of beneficiaries' experience with the review and appeals process while maintaining consistently high levels of program integrity.

Comment: One commenter agreed with the importance of instituting rigorous standards for inter-rater reliability and suggested that CMS consider developing evaluation standards that assess the accuracy as well as reliability of reviews.

Response: We agree with the importance of reliable and accurate reviews relating to the execution of the numerous statutory and regulatory review functions to safeguard beneficiaries. The evaluation criteria includes annual (and at the 54th month) assessment of minimum performance criteria for inter-rater reliability. Additionally, we will monitor the quality program in place at each BFCC-QIO to ensure that the work is both reliable

and accurate. We agree on the merits of developing more formal evaluation standards and criteria for assessing the validity of work by BFCC-QIO reviewers. We intend to investigate suitable measures for consideration in the future.

Comment: Both commenters noted the potential for external factors and perhaps the outcome of the review or appeal itself to influence the beneficiaries' experience and their willingness to participate in the survey process. One commenter stated that there should be careful consideration of these factors in the evaluation standards and criteria; the other commenter recommended not using beneficiary participation in the survey as part of the evaluation.

Response: We believe that the BFCC-QIOs must exercise diplomacy, professionalism and compassion in their performance of numerous statutory and regulatory review functions to safeguard beneficiaries. Our monitoring of the internal quality control processes of the BFCC-QIOs and ongoing monitoring activities focuses in part on the professionalism in their interactions with beneficiaries and their representatives. We recognize that external factors may, to some limited extent, have an impact on the beneficiaries' willingness to participate in the survey of their experience with the appeal or review process. However, based on previous experience with these surveys, we are confident that the proficiency of the work by the BFCC-QIO with beneficiaries or their representatives will be the dominant factor that impacts the willingness by beneficiaries or their representatives to participate in the survey.

Comment: Both commenters indicated that although the BFCC-QIO is primarily responsible for its performance on the evaluation standards and criteria, external factors

outside the control of the BFCC-QIO may also impact performance on measures such as timeliness (of Beneficiary Complaints and Other Quality of Care Reviews, Discharge/Service Termination Reviews, and EMTALA and Higher-Weighted Diagnosis Related Group Reviews). Both commenters suggested that we consider, if appropriate, factors outside the control of the contractors.

Response: We agree with the commenters that there are certain factors, such as natural calamities, for example, hurricanes or earthquakes, in addition to transitional issues at the beginning and end of the contract cycle that may, despite the best mitigating efforts, have an impact on the BFCC-QIO's ability to conduct work in specific regions. We are confident that these extraordinary circumstances can be addressed using our intervention and evaluation standards and criteria.

Comment: One commenter noted the importance of the BFCC-QIO's Internal Quality Control (IQC) Program but recommended that we consider only whether the BFCC-QIO had a process in place and not the quality and competence of the execution of the IQC.

Response: We agree with the importance of the BFCC-QIO instituting an IQC Program. However, we believe that it is in the Government's and beneficiaries' best interest to conduct ongoing monitoring to ensure that the IQC is kept current and accurately reflects the competent execution of the BFCC-QIO's performance of numerous statutory and regulatory review functions to safeguard beneficiaries. We plan to use ongoing monitoring of the IQC as a critical element to inform discussions with the BFCC-QIO on their improvement efforts.

IV. Provisions of the Final Notice

We have analyzed these comments and determined that it is appropriate to finalize without modification the provisions set forth in the July 28, 2014 notice with comment period entitled, “Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contracts.” (79 FR 43747 through 43749).

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

CMS-3296-FN

Dated: November 19, 2014.

Marilyn Tavenner,

Administrator,

Centers for Medicare & Medicaid Services.

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